

Our authority to entertain the appeal is challenged upon two grounds. One is that the decree is not final, because it does not dismiss the libel. That it does not formally do so is true, but this is not decisive. The suit is *in rem*—is against the ship. The decree holds for naught the process under which the ship was arrested, declares she is not subject to any such process and directs her release—in other words, dismisses her without day. Thus the decree ends the suit as effectually as if it formally dismissed the libel. Obviously, therefore, it is final. That it was intended to be so is shown by the court's certificate.

The other ground is that the question raised and decided was not a jurisdictional one in the sense of the statute, Jud. Code, § 238, providing for an appeal or writ of error from a District Court directly to this court "in any case in which the jurisdiction of the court may be in issue." But we think it was such a question, because it directly concerned the power of the District Court, as defined by the laws of the United States, to entertain and determine the suit. *The Steamship Jefferson*, 215 U. S. 130, 137-138; *The Ira M. Hedges*, 218 U. S. 264, 270; *United States v. Congress Construction Co.*, 222 U. S. 199. By the Judicial Code, § 24, cl. 3, the District Courts are invested with original jurisdiction of "all civil causes of admiralty and maritime jurisdiction"; and this is a suit of that character. Whether Congress intended this statute should include suits against ships such as the *Pesaro* is represented to be in the Ambassador's suggestion, when they are within the waters of the United States, is as yet an open question. The statute contains no express exception of them; but it may be that they are impliedly excepted. *The Exchange*, 7 Cranch 116, 136, 146. If so, the implication is a part of the statute. *United States v. Babbitt*, 1 Black 55, 61; *South Carolina v. United States*, 199 U. S. 437, 451. Thus, the answer to the question propounded to the District Court involved a construction of the statute defining its jurisdiction in admiralty.

We come then to consider whether the court erred in sustaining the Ambassador's suggestion that the ship was not subject to its process. Apart from that suggestion, there was nothing pointing to an absence of jurisdiction. On the contrary, what was said in the libel pointed plainly to its presence. The suggestion was made directly to the court and not through any official channel of the

United States. True, it was accompanied by a certificate of the Secretary of State stating that the Ambassador was the duly accredited diplomatic representative of Italy, but while that established his diplomatic status it gave no sanction to the suggestion. The terms and form of the suggestion show that the Ambassador did not intend thereby to put himself or the Italian Government in the attitude of a suitor, but only to present a respectful suggestion and invite the court to give effect to it. He called it a "suggestion" and we think it was nothing more. In these circumstances the libelants' objection that, to be entertained, the suggestion should come through official channels of the United States was well taken. *In re Muir*, Master of *The Gleneden*, ante, p. —. And see *United States v. Lee*, 106 U. S. 196, 209. With the suggestion eliminated, as it should have been, there obviously was no basis for holding that the ship was not subject to the court's process. What the decree should have been if the matters affirmed in the suggestion had been brought to the court's attention and established in an appropriate way we have no occasion to consider now. An opportunity so to present and establish them should be accorded when the case goes back, as it must.

*Decree reversed.*

A true copy.

Test:

*Clerk Supreme Court, U. S.*